Filed 9/20/06 P. v. Browne CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. JEFFREY BROWNE et al., Defendants and Appellants.	B175887 (Los Angeles County Super. Ct. No. KA 064678)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gloria White-Brown, Judge. Affirmed.

A. William Bartz, Jr., under appointment by the Court of Appeal, for Defendant and Appellant Jeffrey Browne.

Richard P. Siref, under appointment by the Court of Appeal, for Defendant and Appellant Sirthomas Raymond Maddox.

No appearance for Plaintiff and Respondent.

* * * * * *

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

Appellants Browne and Maddox were charged with and convicted of one count of robbery, enhanced with personal use of a firearm as to Browne, and arming of a principal as to Maddox. Browne received 13 years in prison, based on the midterm of three years for robbery, plus 10 years for firearms use. Maddox was sentenced to the low term of two years for robbery, plus one year for arming.

Appointed counsel for both defendants have filed *Wende* opening briefs which raise no issues. Browne's brief also requests that this court review the sealed transcript of the in camera proceedings which were held pursuant to his motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

Browne and Maddox were notified that they could file their own briefs. Maddox has not done so. Browne has filed a supplemental brief in which he complains of numerous issues. We therefore discuss the evidence in some detail.

Around 9:30 p.m. on December 23, 2003, Joel Sone left a friend's house and walked towards his car. He had $500 in his wallet, including his Christmas bonus. Two African-American men drove up and got out of their car. One of them held a handgun against Sone's stomach while the other removed property from his pockets and car. The men ordered Sone to walk away. He started to do so, and they drove off in their car. They had taken his wallet, some CD's, and a box of athletic shoes.

Sone immediately reported the crime. Within minutes, sheriff's deputies observed Browne and Maddox, two male African-Americans, walking quickly in a nearby area. They dropped a box and kept walking. The deputies detained and searched them. Maddox held a loaded handgun in a beanie. The contents of his wallet included: $108; some of his own property; and Sone's credit card, lotto ticket and vehicle registration tags. Browne did not have a wallet. The dropped box was Sone's shoe box. Browne had $210 hidden in the lining of his jacket. Maddox admitted the robbery and gave the location of the car which he had used.

At the trial, Sone was certain that Browne was the gunman. He never identified Maddox. He focused his attention on the gunman and not on the second robber, who had a beanie pulled down over his face.

Sone also testified that he had not been sure, and did not identify either defendant, when he saw them at a distance at a field show-up after their arrest. In contrast, one of the arresting deputies, Deputy Daniel Torres, testified that Sone identified both defendants at the showup. Deputy Elwood Crane, who transported Sone to the showup, testified that Sone said one of the defendants looked "familiar."

There was exhaustive questioning at trial about a mistake in the arrest report which was prepared by Deputy Torres's partner, Deputy Victor Iniguez. It wrongly indicated that Sone's property was inside of a wallet which was removed from Browne and not from Maddox. Deputy Iniguez utilized that report at the preliminary hearing, where he mistakenly testified that the property was found on Browne and not Maddox.

Browne's supplemental brief focuses on the mistake in Deputy Iniguez's report and preliminary hearing testimony. Browne ignores the facts that he was caught with Maddox, shortly after the crime, and Sone was positive that Browne was the gunman. The evidence against both defendants was overwhelming, and it simply is not important which of them had the wallet which contained Sone's property. There also was no ineffective assistance of counsel in the way appellant's trial counsel handled the problem.

Contrary to Browne's argument, there was no requirement that a lineup be conducted.

We similarly reject Browne's suggestion that Sone's inability to make an identification at the field showup means there was no probable cause for the arrests. There was ample probable cause, as the defendants matched the general description, were in the vicinity of the crime soon after it occurred, dropped Sone's shoe box, and were in possession of a large amount of cash, a gun, and Sone's recently stolen property.

Browne also complains about a point in the trial where the jury heard that Maddox told the sheriffs about the car which "they" used in the robbery. The trial court sustained an objection. The ensuing testimony concerned what Maddox said about "the car that he

used to get to the robbery." In light of the overwhelming evidence, any possible prejudice to Browne from use of the term "they" in the preceding testimony was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

Browne further complains that the prosecutor committed misconduct in her closing argument. We have reviewed the argument, and see no misconduct in it.

Finally, there was no abuse of discretion in the trial court's handling of this problem: a juror complained that other jurors were drinking alcohol at lunch. The trial court decided that the court and counsel would monitor the situation in case it appeared that any of the jurors were under the influence of alcohol.

We have examined the entire record, including the sealed transcripts of the in camera *Pitchess* proceedings and Browne's motion to change lawyers. (*People v. Marsden* (1970) 2 Cal.3d 118.) From reviewing the record, we are satisfied that counsel for Browne and Maddox have fully complied with their responsibilities, no arguable issues exist, and the issues raised in Browne's supplemental brief lack merit. (*Smith v. Robbins* (2000) 528 U.S. 259; *Wende*, *supra*, 25 Cal.3d 436, 441.)

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

FLIER, J.

We concur:

RUBIN, Acting P.J.

BOLAND, J.